IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 18584 OF 2005

Dated : August 22, 2005

Between:

G.Ganesh Kumar and another

Petitioners

AND

The Municipal Corporation of Visakahapatnam,

Visakhapatnam, Visakhapatnam District.

Respondent

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 18584 OF 2005

ORAL ORDER:

Aggrieved of the action of the respondent in proceeding with the

process of demolition of 3rd and 4th floors in the premises bearing H. No.38-35-7 in S.No. 101/2, Rana Pratap Nagar, Marripalem, Division No.42, Visakhapatnam District, the petitioners filed this writ petition.

It is submitted that the petitioners herein are the absolute owners of the house bearing No. 38-35-3, 38-35-6 and 38-35-7, situated in the land measuring 996.88 Sq. yards at Ranapratap Nagar, Marripalem, Visakhapatnam having purchased the same under registered document. The petitioners obtained permission and constructed ground, first and second floors under approved plan. While so, the respondent issued proceeding UC No. 841/04 dated 18.11.2004 under Sec. 452 of the Municipal Corporation Act, stating that the petitioners have constructed the building contrary to the approved plan. Questioning the same, OS No. 3 of 2005 was filed before the II Addl. Junior Civil Judge, Visakhapatnam and interim injunction was obtained on 17.1.2005. The petitioners, with an intention to construct 3rd and 4th floors made an application to the respondent paying requisite fee on 31.3.2005, which was neither rejected nor approved by the respondent and after waiting for 30 days, the petitioner proceeded with the construction, invoking deeming provision under Sec. 437 of the Act and completed the construction of the 3rd and 4th floors as per the plan submitted along with the application. The said premises is engaged by Vigaz Defence Academy Educational Society, Marripalem.

While so, on 19.8.2005, the officials of the respondent visited the premises and stated that the construction of 3rd and 4th floors is illegal and is liable to be demolished and directed the petitioners to remove the structures within two days. Therefore, the petitioners came up with the present writ petition.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent.

Evidently, the petitioner has approached competent civil court by filing OS No. 3 of 2005 and also filed IA No. 1 of 2005 against the

show cause notice issued by the respondent dated 18.11.2004 for the deviations made in the constructions and obtained interim injunction on 4.5.2005. Again with a view to construct 3rd and 4th floors, submitted an application on 31.3.2005 along with a plan and requisite fee and when the application was neither rejected nor approved, and after waiting for 30 days, invoking deeming provision, under Sec. 437 of the Act, proceeded with the construction and completed construction of 3rd and 4th floors. When the respondent sought to demolish the 3rd and 4th floors, being illegally constructed, the present writ petition is filed seeking to declare such an action as illegal.

In the first instance, the petitioner has rightly approached competent civil court and obtained stay. Therefore, to avoid conflicting judgment in respect of the same premises, I deem it appropriate to dispose of the writ petition at the stage of admission directing the petitioners to approach competent Civil Court and obtain suitable orders against the notice impugned herein by filing necessary miscellaneous application. Therefore, I do not see any justifiable ground to entertain the writ petition. Consequently, the writ petition fails and is accordingly dismissed. No order as to costs.

Elipe Dharma Rao, J.

August 22, 2005

MAS